

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
VERSUS . Criminal Action
ROBERTO ENRIQUE RINCON-FERNANDEZ, . No. H-15-CR-654
Houston, Texas
June 16, 2016
9:56 a.m.
Defendant.
.

EXCERPT OF TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GRAY H. MILLER
REARRAIGNMENT - ALL PROCEEDINGS EXCLUDING **SEALED** SIDE BAR

APPEARANCES:

FOR THE UNITED STATES OF AMERICA:

Mr. Robert Searls Johnson
Mr. John P. Pearson
Assistant United States Attorneys
UNITED STATES ATTORNEY'S OFFICE
1000 Louisiana
Suite 2300
Houston, Texas 77002
713.567.9706
713.567.3300
FAX: 713.718.3300
robert.s.johnson@usdoj.gov
john.pearson@usdoj.gov

Ms. Aisling O'Shea
Mr. Jeremy R. Sanders
UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION
1400 New York Avenue, NW
Washington, DC 20005
202.353.9795
202.616.2650
aisling.o'shea@usdoj.gov
jeremy.sanders@usdoj.gov

PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

APPEARANCES

(continued)

FOR THE DEFENDANT:

Mr. Samuel J. Louis
Mr. Gary J. Siller
STRASBURGER & PRICE
909 Fannin Street
Suite 2300
Houston, Texas 77010-1036
713.951.5604
713.951.5600
FAX: 713.951.5660
sam.louis@strasburger.com
gary.siller@clarkhillstrasburger.com

Mr. Paul R. Nalven
ATTORNEY AT LAW
576 Fifth Avenue
Suite 1002
New York, New York 10036
212.616.5540
nalvenlaw@yahoo.com

Mr. James Lavine
ZIMMERMANN, LAVINE & ZIMMERMANN
770 South Post Oak
#620
Houston, Texas 77056
713.552.0300
FAX: 713.552.0746

INTERPRETER PRESENT

COURT REPORTER:

GAYLE L. DYE, CSR, RDR, CRR
515 Rusk, Room 8016
Houston, Texas 77002
713.250.5582

1 EXCERPT OF PROCEEDINGS

2 June 16, 2016

3 THE COURT: All right. The Court calls Criminal Case
4 15-654-1, United States of America versus Roberto Enrique
5 Rincon-Fernandez.

09:56:33

6 Who is here for the Government?

7 MR. JOHNSON: Robert Johnson for the Government along
8 with John Pearson, Aisling O'Shea, Jeremy Sanders.

9 THE COURT: Mr. Johnson, good morning to you.

09:56:57

10 MR. JOHNSON: Good morning, sir.

11 THE COURT: And for the Defendant?

12 MR. LOUIS: Sam Louis here for the Defendant along
13 with Paul Nalven and Gary Siller.

14 THE COURT: All right. Good morning to you.

09:57:08

15 MR. LOUIS: Good morning, your Honor.

16 THE COURT: All right. We're here initially on an
17 arraignment against Mr. Rincon-Fernandez on a criminal
18 information that the Government has filed.

19 Mr. Rincon, you have a translator here this
20 morning. Are you able to hear everything and understand
21 everything so far?

09:57:26

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. What I need to advise you of
24 is that you have been charged in a criminal information by the
25 United States Government with three criminal violations, and I

09:57:37

1 need to advise you of these charges and the potential penalty
2 for each of those charges.

3 In Count 1 of the criminal information, you are
4 charged with conspiracy to violate the Foreign Corrupt Practices
09:57:55 5 Act.

6 Do you understand the charge against you in Count
7 1 of the information?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. Now, if you are convicted of
09:58:07 10 that charge, the statutory maximum term of imprisonment is five
11 years and a fine of \$250,000 or twice the gain or loss.

12 Do you understand that's the maximum penalty for
13 Count 1 of the information?

14 THE DEFENDANT: Yes, your Honor.

09:58:25 15 THE COURT: The Court would also impose a \$100 special
16 assessment that you would be required to pay. And this count
17 carries a term of supervision of three years which is what
18 happens after you are released from prison, supervised release.

19 Do you understand what supervised release is?

09:58:45 20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: All right. In Count 2 of the indictment,
22 you are charged with violation of the Foreign Corrupt Practices
23 Act.

24 Do you understand the charge in Count 2 of the
09:58:59 25 information?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Now, if you are convicted, the
3 statutory maximum imprisonment for Count 2 is five years in
4 federal prison and a fine of \$250,000 or twice the gain or loss.

09:59:14 5 Do you understand that's the maximum penalty for
6 Count 2?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And again, there's three years of
9 supervised release after you are released from prison and a \$100
09:59:25 10 special assessment.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. And in Count 3 of the
14 information, you are charged with making a false statement on a
09:59:38 15 federal income tax return.

16 Do you understand the charge against you in Count
17 3 of the information?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Now, if you are convicted of
09:59:44 20 Count 3, the maximum penalty is three years in federal prison
21 and a fine of \$250,000 or twice the gain or loss.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. And there's a period of one
10:00:01 25 year of supervised release for that offense and also a \$100

1 special assessment.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. And counsel, is your client at
10:00:17 5 this time willing to waive the formal reading of the
6 information?

7 MR. LOUIS: Yes, your Honor. The information has been
8 explained to him in Spanish and -- the criminal information.

9 THE COURT: All right. Thank you, Mr. Louis.

10:00:26 10 You have certain rights, of course,
11 Mr. Rincon-Fernandez, including the right to remain silent, the
12 right to be represented by counsel in this case. You have hired
13 these gentlemen to represent you as counsel. If you did not
14 have the funds to hire an attorney on your own, the Court would
10:00:42 15 appoint an attorney for you.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. Now, how do you plead to these
19 charges in the criminal information?

10:00:55 20 THE DEFENDANT: Your Honor, good morning.

21 Guilty.

22 THE COURT: All right. So, you wish to plead guilty
23 to Counts 1, 2, and 3 of the criminal information; is that
24 correct?

10:01:21 25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: All right. Before I can accept a plea of
2 guilty from you, I have to ask you certain questions that you
3 must answer under oath. I need to make sure that your plea of
4 guilty is voluntary, entered into freely and without any
5 coercion.

10:01:35

6 I need to be sure that your plea is informed,
7 entered with a clear understanding of the consequences of
8 pleading guilty and with an understanding of all of the legal
9 rights that you give up when you plead guilty. I also need to
10 be satisfied that you are, in fact, guilty of these charges in
11 the criminal information.

10:01:49

12 So, to the extent that you can, would you please
13 raise your right hand to be placed under oath.

14 (The Defendant was sworn.)

10:02:14

15 THE COURT: All right, sir, thank you.

16 Do you understand that you have now been placed
17 under oath and that, if you answer any of my questions falsely,
18 your answers could later be used against you in another
19 prosecution for perjury?

10:02:24

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. It's very important that you
23 listen carefully to all of the questions that I ask you and that
24 you give me truthful answers to all of my questions.

10:02:33

25 Will you do that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Tell me your full name,
3 please.

4 THE DEFENDANT: Roberto Enrique Rincon-Fernandez.

10:02:45 5 THE COURT: How old are you, sir?

6 THE DEFENDANT: 55 years.

7 THE COURT: And how far in school did you go? How
8 much education do you have?

9 THE DEFENDANT: University.

10:02:57 10 THE COURT: All right. And what is your degree in?

11 THE DEFENDANT: A systems engineer and mechanical --
12 system analyst and mechanical engineer.

13 THE COURT: Are you able to read and write the English
14 language?

10:03:14 15 THE DEFENDANT: Medium.

16 THE COURT: All right. Are you more comfortable in
17 the Spanish language?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And has everything in this case been
10:03:24 20 explained to you in Spanish?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. Have you ever been treated for
23 mental illness or psychological problems of any kind?

24 THE DEFENDANT: No. No, your Honor.

10:03:37 25 THE COURT: Are you addicted to any drugs?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Are you sick today in any way that would
3 prevent you from understanding what is happening here?

4 THE DEFENDANT: No, your Honor.

10:03:48 5 THE COURT: Have you taken any medication, either
6 over-the-counter medication or prescription medication, in the
7 last few days or today?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Have you had any illegal drugs or alcohol
10:04:06 10 in the last few days or today?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Are you presently under the influence of
13 any drug or alcohol?

14 THE DEFENDANT: No, your Honor.

10:04:14 15 THE COURT: Have you had enough time to talk to your
16 attorneys in this case?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. And are you satisfied with
19 your attorneys?

10:04:23 20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you need to ask your lawyers any
22 questions or get any advice from them before we go on?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: All right. During the course of the
10:04:36 25 hearing if, at any point, you need to ask your attorneys a

1 question or get advice from them, you can do that prior to
2 answering my questions.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

10:04:48 5 THE COURT: All right.

6 Mr. Louis, have you and your co-counsel had
7 enough time to investigate the law and the facts of your
8 client's case?

9 MR. LOUIS: Yes, your Honor. We have met with the
10:04:59 10 client many times and investigated the law and facts of this
11 case and made known to him the facts and the basis for the
12 charges, and we recommended that Mr. Rincon enter a plea of
13 guilty to the criminal information.

14 THE COURT: All right. And you're satisfied that your
10:05:16 15 client understands these charges against him in the
16 information --

17 MR. LOUIS: Yes.

18 THE COURT: -- and the range of punishment he faces in
19 the case?

10:05:22 20 MR. LOUIS: Yes. As he's indicated, we've gone over
21 the substance of the criminal information in Spanish. We have
22 met with him on numerous occasions and discussed the law and
23 facts applicable to the charges and, based upon that
24 investigation, discussed with him his choices and made
10:05:42 25 recommendations to him based upon our investigation of his

1 entering a plea of guilty to the charges today.

2 THE COURT: And during this time, has your client been
3 able to fully cooperate with you?

4 MR. LOUIS: Yes, he has, your Honor. He has had the
10:05:55 5 benefit of meeting with us and having a translator to discuss
6 with him the law and facts and circumstances of his case.

7 THE COURT: All right. And in your opinion, is he
8 mentally competent to enter a plea of guilty in this case?

9 MR. LOUIS: Yes, he is, your Honor. In my opinion, he
10:06:10 10 is mentally competent and has the capacity to understand the
11 full nature of the facts and circumstances of this case and this
12 investigation.

13 THE COURT: All right. Thank you, Mr. Louis.

14 The Court finds that the Defendant knowingly,
10:06:20 15 voluntarily, intelligently, and with the advice of his attorneys
16 seeks to enter a plea of guilty.

17 And Mr. Rincon-Fernandez, before I can accept a
18 plea of guilty from you, I need to make sure that you understand
19 all of the legal rights that you give up when you plead guilty.

10:06:38 20 First of all, you have the right, if you wish, to
21 plead not guilty to these charges; and if you plead not guilty,
22 then you would be entitled to have a trial on these charges.

23 Do you understand your right to have a trial?

24 THE DEFENDANT: Yes, your Honor.

10:06:51 25 THE COURT: And if you were tried, you would be tried

1 by a jury of 12 citizens from this district or by the judge
2 without a jury if everyone agreed to that.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

10:07:06

5 THE COURT: And as I mentioned before, you're entitled
6 to be represented by counsel in this case. You have retained
7 counsel. However, if you did not have the funds to retain
8 counsel on your own, the Court would appoint an attorney to
9 represent you throughout this case, including trial.

10:07:21

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, at this trial, the burden would be on
13 the United States to prove your guilt beyond a reasonable doubt
14 on each charge against you; and you would have no burden to
15 prove that you were innocent because, under our system of
16 justice, you are presumed to be innocent.

10:07:34

17 Do you understand the presumption of innocence?

18 THE DEFENDANT: Yes, your Honor.

10:07:50

19 THE COURT: Now, in order to prove your guilt beyond a
20 reasonable doubt, the Government would call witnesses; and they
21 would appear and testify here in open court under oath. You and
22 your attorneys would see and hear all of these witnesses; and
23 then, your lawyers would be allowed to ask them questions on
24 your behalf.

10:08:06

25 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And although you would have no obligation
3 to present any evidence or to call any witnesses, you would have
4 the right to do so if you wanted to; and that would include the
5 right to subpoena witnesses, that is, to require them to come
6 into court and testify on your behalf.

7 Do you understand that right?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: During this trial, you would also have the
10 right to remain silent because no one can compel you to be a
11 witness against yourself; and if you chose to exercise your
12 right to remain silent, it could not be held against you. In
13 fact, you would have the right to have the jury instructed that
14 they could not use your silence as any evidence of your guilt in
15 this case.

16 Do you understand the right to remain silent?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, the fact that you chose to present
19 evidence of any kind at trial would never change the burden of
20 proof. That burden would always remain on the Government until
21 the very end of the case. And at this trial, you could not be
22 convicted unless every member of the jury found that you were
23 guilty beyond a reasonable doubt. In other words, the verdict
24 would have to be unanimous by all 12 members of the jury.

25 Do you understand?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, if you plead guilty today and I
3 accept your plea, you understand that you are going to be
4 convicted of these charges and you will not have a trial?

10:09:32 5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Also, by pleading guilty today, you are
8 giving up the right to have the facts that are pleaded in the
9 information or that affect your sentence proven to a jury or
10 proven beyond a reasonable doubt.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. You're also giving up a number
14 of arguments that you could have made later on to attack your
15 conviction or your sentence by pleading guilty today, arguments
16 that you could have made had you gone to trial and been
17 convicted rather than pleading guilty.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

10:10:12 20 THE COURT: For example, you could not come forward
21 later and argue that there were defects in the way that you were
22 investigated, arrested, or prosecuted in order to challenge your
23 conviction or your sentence. You would give up the right to
24 claim that you were subjected to an illegal search and seizure,
10:10:31 25 that you gave an unconstitutional confession, or that your right

1 to a speedy trial was violated.

2 Now, this is not a complete list, just a few
3 examples; but I want you to understand that, if you plead guilty
4 today and I accept your plea, that you will not be able to raise
10:10:47 5 these or similar defenses later on to attack your conviction or
6 your sentence.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. So, you understand that, by
10:10:58 10 entering a plea of guilty today, if I accept your plea, that you
11 are giving up your right to a trial and all of these other legal
12 rights that I have just explained to you?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. Now, are you a citizen of the
10:11:12 15 United States?

16 THE DEFENDANT: No.

17 THE COURT: All right. What country are you a citizen
18 of?

19 THE DEFENDANT: Venezuela.

10:11:20 20 THE COURT: Venezuela. And you are here, as I
21 understand it, on a visa; is that correct?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. All right. These are felony
24 offenses; and if you plead guilty today and I accept your plea,
10:11:36 25 this may lead to your deportation or exclusion from this country

1 or a denial of naturalization under federal law.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. I do not know what immigration
10:11:49 5 consequences will attend to this, but it's important that you
6 are aware that there may be very serious immigration
7 consequences to your plea of guilty in this case.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10:12:02 10 THE COURT: All right. Now, as I said before, this
11 case is before the Court on what is called a criminal
12 information. And you have the right, if you wish, to request
13 and demand that you be indicted by a federal grand jury in this
14 case rather than proceeding on the basis of a criminal
10:12:24 15 information.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. Now, a federal grand jury
19 would consist of at least 16 but not more than 23 people; and 12
10:12:34 20 of those people would have to vote to return what's known as a
21 true bill against you before you could be prosecuted, that is,
22 12 members of the grand jury would have to believe that there is
23 a sufficient probable cause for you to have a trial.

24 Do you understand that?

10:12:48 25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Now, it's my understanding that you wish
2 to waive your right to be indicted in this case and proceed on
3 the basis of this criminal information.

4 Is that correct?

10:13:00 5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And have you discussed this fully with
7 your attorneys?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. And have they answered all of
10:13:09 10 your questions about this?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: All right. And do you believe it is in
13 your best interest at this point to waive indictment and proceed
14 on the basis of the information?

10:13:18 15 THE DEFENDANT: Yes, your Honor. Yes, your Honor.

16 THE COURT: Mr. Louis.

17 MR. LOUIS: Yes, your Honor. The waiver of indictment
18 has been read to him. He understands the full nature of the
19 waiver, and he has signed it.

10:13:32 20 THE COURT: All right.

21 And this has been explained to you in Spanish; is
22 that correct?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And your lawyers have answered any
10:13:46 25 questions you may have about it; is that correct?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. I'm going to approve the
3 waiver of indictment.

4 All right, sir. I need to go over one more time
10:13:59 5 the charges against you so that I can explain to you what the
6 Government has to prove with respect to each one of these
7 charges.

8 As I mentioned before, Count 1 of the information
9 charges you with conspiracy to violate the Foreign Corrupt
10:14:11 10 Practices Act; and the Court -- the Government has to prove the
11 following three things beyond a reasonable doubt for you to be
12 convicted of that offense:

13 first of all, that you and at least one other
14 person made an agreement to violate the Foreign Corrupt
10:14:26 15 Practices Act as charged in the information;

16 secondly, that you knew the unlawful purpose of
17 the agreement and that you joined in it willfully, that is, with
18 the intent to further the unlawful purpose;

19 and number three, that one of the conspirators
10:14:42 20 during the existence of the conspiracy knowingly committed at
21 least one of the overt acts described in the information in
22 order to accomplish some object or purpose of the conspiracy.

23 Do you understand that the Government has to
24 prove each of those three things beyond a reasonable doubt for
10:14:58 25 you to be convicted of the charge in Count 1 of the information?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. And I've already discussed the
3 maximum penalty with you.

4 With respect to Count 2 of the information, you
10:15:12 5 are charged with violation of the Foreign Corrupt Practices Act;
6 and in order for you to be convicted of that offense, the
7 Government has to prove the following seven things beyond a
8 reasonable doubt:

9 first of all, that you are a domestic concern or
10:15:27 10 an officer, director, employee, or agent of a domestic concern
11 or a stockholder thereof acting on behalf of such domestic
12 concern or aided and abetted a domestic concern;

13 secondly, that you acted corruptly and willfully;

14 third, that you made use of the mails or any
10:15:47 15 means or instrumentality of interstate commerce in furtherance
16 of an unlawful act under this statute or aided and abetted
17 another to do so;

18 four, that you offered, paid, promised to pay, or
19 authorized the payment of money or of anything of value or aided
10:16:04 20 and abetted another to do the same;

21 fifth, the payment or gift was to a foreign
22 official or to any person while the Defendant -- while you knew
23 that all or a portion of the payment or gift would be offered,
24 given, or promised, directly or indirectly, to a foreign
10:16:21 25 official;

1 sixth, that the payment was made for one of four
2 purposes: to influence any act or decision of the foreign
3 official in his or her official capacity; to induce the foreign
4 official to do or omit to do any act in violation of that
10:16:36 5 official's lawful duty; to induce the foreign official to use
6 his or her influence with a foreign government or
7 instrumentality thereof to affect or influence any act or
8 decision of such government or instrumentality; or to secure any
9 improper advantage;

10:16:53 10 and number seven, the payment was made to assist
11 you or another whom you aided and abetted in obtaining or
12 retaining business for or with or directing business to any
13 person.

14 The Government has to prove each of those seven
10:17:08 15 things beyond a reasonable doubt for you to be convicted of the
16 offense that's alleged in Count 2 of the information.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. And there again, we have
10:17:21 20 discussed the maximum penalty for that.

21 Finally, with respect to Count 3 of the
22 information, you are charged with making a false statement on a
23 federal income tax return. Now, in order for you to be
24 convicted of that offense, the Government has to prove the
10:17:34 25 following five things beyond a reasonable doubt:

1 number one, that you signed an income tax return
2 that contained a written declaration; that it was made under
3 penalties of perjury;

4 number two, that in this return that you falsely
10:17:47 5 stated that your total income was \$266,070 during the year 2010;

6 third, that you knew the statement was false;

7 fourth, that the false statement was material;

8 and fifth, that you made the statement willfully,
9 that is, with the intent to violate a known legal duty.

10:18:07 10 Do you understand the Government has to prove
11 each of those five things beyond a reasonable doubt for you to
12 be convicted of this offense? Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. Now, I mentioned before that
10:18:21 15 each one of these counts carries a term of supervised release.
16 The first two carry a three-year term of supervised release, and
17 the last one carries a one-year term of supervised release.

18 Supervised release is what happens after you are
19 released from prison.

10:18:35 20 Do you understand what supervised release is?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Supervised release carries with it certain
23 conditions that you must comply with after you are released from
24 prison. If you fail to comply with the conditions of your
10:18:48 25 supervised release, then I can revoke your supervised release

1 and send you back to federal prison for up to two additional
2 years in prison without any credit for the time that you already
3 served on supervised release before you committed the violation.

4 Do you understand that?

10:19:04 5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Also, if you violate the conditions and I
7 revoke your supervised release, then I can impose another term
8 of supervised release after you serve the jail time on the
9 supervised release violation.

10:19:20 10 Now, if you are convicted of another crime, you
11 may be sentenced to additional years in prison and other
12 punishment depending upon what the crime is; and I can run the
13 jail time that I give you on the supervised release violation in
14 addition to and not concurrently with the jail time on the new
10:19:38 15 crime.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. Now, since you're not a
19 citizen of the United States, you may be deported after you are
10:19:48 20 released from prison; and your period of supervised release
21 would become inactive. If you are deported, it is a condition
22 of your supervised release that you may not illegally reenter
23 the United States.

24 Another condition is if you do come back to the
10:20:04 25 United States, legally or illegally, you must immediately report

1 to the probation department and tell them that you are back in
2 the United States. Your supervised release at that time would
3 become active.

4 If you fail to report to probation or if you
10:20:18 5 reenter the United States illegally, that would be a violation
6 of the conditions of your supervised release; and if that
7 happens, I will revoke your supervised release and send you back
8 to prison on that charge.

9 Do you understand this?

10:20:32 10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Also, if you were to reenter the United
12 States illegally, the Government could charge you with a
13 separate felony of illegal reentry for which you may receive
14 substantial additional years in prison.

10:20:46 15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All right. Finally, there is no parole in
18 the federal prison system; and any prison sentence that you
19 receive in this case will not be shortened by parole.

10:20:58 20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. So, you clearly understand the
23 nature of the charges against you in this criminal information
24 and the range of punishment that you face for each of these
10:21:13 25 charges; is that right?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right, thank you.

3 All right. Counsel, it's my understanding that
4 you have entered into a written plea agreement --

10:21:24 5 MR. JOHNSON: Correct, your Honor.

6 THE COURT: -- in this case.

7 And this is being offered pursuant to Rule
8 11(c) (1) (A) and (B) of the Federal Rules of Criminal Procedure,
9 correct?

10:21:35 10 MR. JOHNSON: Yes, your Honor.

11 THE COURT: All right. Mr. Johnson, will you please
12 summarize for the record the essential terms of the plea
13 agreement.

14 MR. JOHNSON: Yes, your Honor. The basic terms of the
10:21:42 15 plea agreement are that the Defendant pleads guilty to Counts 1,
16 2, and 3 of the criminal information; that the Defendant agrees
17 to waive appeal and collateral attack; and that the Defendant
18 agrees to forfeiture by imposition of a money judgment.

19 In turn, the Government agrees to a three-level
10:22:01 20 departure at the time of sentencing for the Defendant's full
21 acceptance of responsibility.

22 THE COURT: All right.

23 MR. JOHNSON: May we approach the bench at this time,
24 your Honor?

10:22:13 25 THE COURT: Yes. Yes, sir.

1 (Please see Docket Entry Number 165 for the **SEALED** side-bar
2 discussion.)

3 THE COURT: All right. Mr. Rincon-Fernandez, this
4 plea agreement of yours has been reduced to writing; and I
10:25:00 5 assume that you have gone over this with your attorneys.

6 Is that correct?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And has this all been explained to you and
9 read to you in Spanish?

10:25:12 10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: All right. And did your attorneys answer
12 any questions that you have about this plea agreement?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. So, I need to tell you a
10:25:27 15 couple of things: Number one, obviously, today, you will not
16 know what your sentence is going to be in this case. What we're
17 doing today is you are deciding whether to plead guilty to these
18 three charges in the criminal information and sign this plea
19 agreement. But you will not know what your sentence is going to
10:25:44 20 be in this case until some months later at the sentencing
21 hearing.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And if the sentence that you receive later
10:25:53 25 on at the sentencing hearing turns out to be longer than you

1 expected to receive, you're not going to be able on that basis
2 to come back in here and withdraw this guilty plea and start
3 this process over again. What we're doing here today with
4 respect to your pleas of guilty on these charges, this is final.

10:26:12

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, there are certain things that can
8 affect the length of your sentence in this case. One of those
9 things is a prior criminal history, if you have one. Depending
10 upon what crimes you may have committed in the past and when
11 they were committed, that can make the sentence in this case
12 longer.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

10:26:34

15 THE COURT: Another thing that can affect the sentence
16 and make it longer is the amount of money involved. In other
17 words, generally, the more money involved, the longer the
18 sentence.

19 Do you understand that?

10:26:45

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: All right. Now, this plea agreement that
22 you have entered into is an agreement with the prosecutors in
23 this case; and so, this plea agreement does not bind me or
24 affect me in any way when I determine your sentence later on at
25 the sentencing hearing.

10:27:01

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: In other words, I will determine your
4 sentence completely independently of this plea agreement.

10:27:10

5 Do you understand?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, one of the features of this plea
8 agreement is that you are agreeing to waive your rights to
9 appeal. That means, essentially, that whatever the result is in
10 this case, you're going to be stuck with that result whether you
11 like it or not.

10:27:25

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And if you don't like it, you're not going
15 to be able to take an appeal to the Court of Appeals.

10:27:34

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: On the other hand, the Government is not
19 giving up its rights to appeal in this case.

10:27:46

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. Now, if you plead guilty today
23 and I accept your plea, then your guilt is established; and we
24 move to the sentencing process. And this is a summary of what
25 happens from this point on: The probation department conducts a

10:27:57

1 presentence investigation; and then, they prepare a report to
2 assist me in sentencing. And you can contribute to that report
3 by meeting with the probation department along with your
4 attorneys and providing them with information.

10:28:12

5 The Government does the same thing; and then, you
6 see the presentence report before I do; and you can object to
7 any errors that you think it contains. The Government can do
8 the same thing, and the probation department then writes
9 responses to any objections that you have raised or that the

10:28:29

10 Government has raised. And then, they send the entire packet of
11 information to me for my review prior to the sentencing hearing.

12 And at the sentencing hearing, everyone comes
13 back to Court just like we are this morning; and you and your
14 attorneys will have an opportunity to speak on your behalf

10:28:48

15 before I determine the sentence in your case.

16 Do you understand how this process works?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. Even though I do the
19 sentencing, I have no idea, as I sit here today, what sentence
20 you're going to receive at the sentencing hearing. I do not
21 know how the Federal Sentencing Guidelines are going to work in
22 your case, and I will not know until after I review the
23 presentence report.

10:29:00

24 But I will decide all disputed factual and legal
25 issues in this case; and then, I will determine the appropriate

10:29:14

1 sentencing guideline range, that is, the range of months that
2 are recommended under the advisory guidelines for your sentence.

3 Do you understand this?

4 THE DEFENDANT: Yes, your Honor.

10:29:29

5 THE COURT: Now, in doing this, I do not use the
6 beyond a reasonable doubt standard that a criminal jury would
7 use; and the rules of evidence do not apply. A sentencing
8 process is much more informal than a trial.

9 Once I determine what the appropriate sentencing
10 guideline range is for your case, I am not automatically
11 required to give you a sentence within that range.

10:29:44

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: I may give you a sentence within that
15 range if I think that is the appropriate sentence, but I have
16 the ability to go up from the top of the guideline range. And
17 in your case, I could give you a sentence all the way up to five
18 years in federal prison.

10:29:59

19 Do you understand that?

10:30:14

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: I can also go below the sentencing
22 guideline range and give you a sentence less than recommended by
23 the advisory guidelines if I think that is the appropriate
24 sentence in your case.

10:30:30

25 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, I assume that you have discussed with
3 your attorneys the Federal Sentencing Guidelines and how they
4 may work in your case.

10:30:39 5 Is that correct?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: All right. Whatever your lawyers have
8 told you about the Sentencing Guidelines and how they might work
9 in your case -- maybe they've even given you some indication of
10:30:51 10 what they think your sentence might ultimately be -- none of
11 that is a promise or a guarantee of any kind from your attorneys
12 about your sentence.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

10:31:01 15 THE COURT: It is simply their best estimate of what's
16 going to happen in this case based on their experience.

17 Do you understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Now, finally, before I can
10:31:12 20 accept a plea of guilty from you, I have to make a determination
21 that there is a factual basis for your plea of guilty in this
22 case; and that factual basis is contained in your written plea
23 agreement beginning on page 11.

24 So, what I'm going to do at this point is I'm
10:31:33 25 going to ask the prosecutor to summarize the facts that he

1 believes the Government can prove about you in this case if we
2 had a trial. And when he finishes, I'm going to ask you if
3 those facts are true.

4 Do you understand?

10:31:45 5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: All right.

7 Mr. Johnson.

8 MR. JOHNSON: Yes, your Honor.

9 If this case were to proceed to trial, the
10:31:50 10 Government would prove with legal and competent evidence that
11 the Defendant was the owner of a number of energy companies,
12 including US companies, which supplied equipment and services to
13 Petroleos de Venezuela, SA, known commonly by the acronym PDVSA,
14 which is the Venezuelan state-owned and state-controlled oil
10:32:15 15 company, or to wholly-owned subsidiaries or affiliates thereof,
16 including Bariven, SA, which is the purchasing arm of PDVSA.

17 PDVSA, together with its subsidiaries and
18 affiliates, was responsible for the exploration, production,
19 refining, transportation, and trade in energy resources in
10:32:34 20 Venezuela and provided funding for other operations of the
21 Venezuelan government.

22 From in or about 2009 through in or about 2014,
23 Defendant agreed with his co-Defendant, Abraham Shiera, and
24 others to pay bribes and other things of value to PDVSA
10:32:51 25 officials in order to obtain or retain business with PDVSA.

1 Specifically, Defendant agreed to and did pay
2 bribes to PDVSA officials in exchange for their assistance to
3 Defendant, his companies, and his co-conspirators, including
4 Shiera's companies, in helping them win PDVSA contracts,
10:33:09 5 including providing Defendant and his co-conspirators with
6 inside information concerning the PDVSA bidding process, placing
7 more than one of Defendant's companies on certain bidding panels
8 for PDVSA projects and assisting Defendant's companies in
9 receiving payment for previously-awarded PDVSA contracts, among
10:33:27 10 other things.

11 Defendant understood that the bribe payments were
12 made in part to continue the relationship of the officials and
13 that the officials would continue to provide assistance in the
14 future with regard to future PDVSA contracts. Defendant and
10:33:43 15 Shiera held several in-person meetings with PDVSA officials
16 where they discussed the bribe payments, bidding panels for
17 contracts that Defendant and Shiera wanted to win, upcoming
18 PDVSA contracts, and other inside information, and the
19 requirement that bribe payments had to be made to ensure payment
10:34:01 20 on the contracts already performed.

21 Defendant or others working at Defendant's
22 direction provided things of value to PDVSA officials, sometimes
23 at their request, in exchange for their assistance to
24 Defendant's companies, including money, real estate,
10:34:16 25 recreational travel, gifts, and meals.

1 Defendant or others working at Defendant's
2 direction agreed to pay PDVSA officials a percentage of the
3 value of contracts for which the officials provided assistance
4 to Defendant's companies, typically, ranging from one percent
5 for a lower-level buyer up to ten percent for more senior PDVSA
6 officials. The actual bribe payments, however, did not
7 consistently match the agreed-upon percentages.

8 Defendant or others working at Defendant's
9 direction made the bribe payments by wiring money from various
10 bank accounts controlled by Defendant, his companies, and his
11 co-conspirators to various bank accounts in the United States
12 and abroad in the names of PDVSA officials, companies -- and
13 companies controlled by PDVSA officials, and family members,
14 friends, and associates of PDVSA officials.

15 Defendant and his co-conspirators made bribe
16 payments to a number of PDVSA buyers and their immediate
17 supervisors in exchange for their assistance to Defendant, his
18 companies, and his co-conspirators, including Shiera. In
19 exchange for these bribe payments, the buyers would place
20 Defendant's companies and Shiera's companies on the bidding
21 panels for PDVSA contracts; and the supervisors would assign a
22 buyer selected by Defendant to the bidding process for certain
23 contracts on which Defendant and his co-conspirators wished to
24 bid.

25 Many of the panels included more than one company

1 controlled by Defendant or more than one company controlled by
2 Defendant or Shiera. The panels also frequently included
3 companies that did not supply or manufacture or would not supply
4 the product PDVSA sought to purchase which were included on the
10:35:52 5 bidding panels in order to increase the chances that one of
6 Defendant's companies would win the contract.

7 Defendant, Shiera, and their co-conspirators
8 would often select and would communicate to the PDVSA officials
9 receiving the bribes the company that they wanted to win the
10:36:07 10 contract with PDVSA even if the equipment was actually being
11 supplied from another of Defendant's or Shiera's companies.

12 One of the buyers with whom Defendant made a
13 bribery agreement was referred to in the information as, quote,
14 Official C. Defendant reached an agreement to pay Official C in
10:36:28 15 exchange for Official C's assistance in awarding business to
16 Defendant's companies.

17 On or about May 8, 2012, Defendant caused a wire
18 transfer in the amount of \$150,000 to be sent from the bank
19 account of one of his companies based in the Southern District
10:36:45 20 of Texas to a bank account in the name of a company that
21 Official C co-owned with a relative.

22 Defendant also made bribe payments to
23 higher-level PDVSA officials in exchange for their assistance to
24 Defendant, his companies, and his co-conspirators, including
10:37:02 25 Shiera. In exchange for these bribe payments, certain

1 high-level PDVSA officials would place Defendant's and Shiera's
2 companies on PDVSA-approved vendor lists, award contracts to
3 Defendant's and Shiera's companies and give payment priority to
4 Defendant's and Shiera's companies so that they would get paid
10:37:15 5 on contracts already performed ahead of other PDVSA vendors with
6 outstanding invoices.

7 In addition, Defendant willfully failed to report
8 foreign dividend income from a Venezuelan corporation owned by
9 Defendant on his 2010 federal income tax return as he was
10:37:36 10 required to do as a lawful permanent residence at that time.

11 On or about October 17, 2011, Defendant signed in
12 the Southern District of Texas and then caused to be filed with
13 the Internal Revenue Service a Form 1040 for the calendar year
14 2010 that was verified by written declaration that it was made
10:37:55 15 under the penalties of perjury for which Defendant did not, in
16 fact, believe to be true and correct as to every material
17 matter.

18 Specifically, Defendant's total reported income
19 on his 2010 Form 1040 was \$266,070 despite the fact that, as
10:38:12 20 Defendant then knew and believed, the foreign dividends that he
21 received from a Venezuelan corporation owned by Defendant
22 represented income that he was required to report. In total,
23 Defendant failed to report approximately \$6,330,284 in
24 additional dividend income for the tax year 2010.

10:38:32 25 THE COURT: Thank you, Mr. Johnson.

1 MR. JOHNSON: Thank you, your Honor.

2 THE COURT: Mr. Rincon-Fernandez, you've heard the
3 Government's attorney summarize the facts that he believes the
4 Government can prove about you in this case and which are
5 contained in your written plea agreement.

10:38:42

6 Are those facts true?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: All right. The Court finds that there is
9 a factual basis for the plea.

10:38:53

10 Sir, let me ask you at this time what is your
11 plea to the charges against you in Counts 1, 2, and 3 of the
12 information, guilty or not guilty?

13 THE DEFENDANT: Guilty.

10:39:06

14 THE COURT: All right. And do you state here in open
15 court under oath that each and every allegation in Counts 1, 2,
16 and 3 of the information are all true and correct?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And are you making this plea of guilty to
19 Counts 1, 2, and 3 freely and voluntarily?

10:39:23

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has anyone forced you, threatened you,
22 coerced you, or done any violence to you or any other person to
23 get you to plead guilty in this case?

24 THE DEFENDANT: No, your Honor.

10:39:35

25 THE COURT: Are you pleading guilty because of any

1 promise that's been made to you other than what is contained in
2 your written plea agreement?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Are you pleading guilty to protect someone
5 else?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Are you pleading guilty because you are
8 guilty and for no other reason?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Have you read or had read to you in
11 Spanish the terms of your written plea agreement and do you
12 understand it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And are you prepared to sign the plea
15 agreement under oath at this time?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All right. Let's get it executed if you
18 haven't already.

19 MR. LOUIS: Your Honor, for the record --

20 THE COURT: Yes, sir.

21 MR. LAVINE: Jim Lavine, your Honor, L-a-v-i-n-e,
22 representing --

23 THE COURT: The Defendant?

24 MR. LAVINE: -- Mr. Fernandez-Rincon.

25 THE COURT: Yes.

1 MR. LAVINE: I'm on a ten-minute break from Judge
2 Hughes' court. I think I need to sign some of these documents.

3 THE COURT: All right.

4 MR. LOUIS: Perfect timing.

10:41:27 5 MR. LAVINE: Thank you, your Honor.

6 THE COURT: And back to Judge Hughes.

7 MR. LAVINE: And back to Judge Hughes.

8 THE COURT: Good luck.

9 Mr. Rincon-Fernandez, I have been handed a
10:43:03 10 written plea agreement in your case; and I just want to confirm
11 with you on the record on page 22 of the plea agreement is that
12 your signature?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And on the last page, page 25, of the plea
10:43:19 15 agreement, is that also your signature?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Have you executed this plea agreement
18 freely and voluntarily after having had it fully explained to
19 you to your satisfaction by your attorneys?

10:43:32 20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Mr. Louis, do you know of any reason why
22 your client should not plead guilty to these charges?

23 MR. LOUIS: I know of no meritorious defenses why
24 Mr. Rincon would not -- or should not enter a plea of guilty to
10:43:46 25 the charges.

1 THE COURT: All right. Are you aware at this time of
2 any additional admonishments that I need to provide to your
3 client?

4 MR. LOUIS: No, your Honor.

10:43:53 5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: I'm not, your Honor.

7 THE COURT: All right, thank you.

8 These are the Court's findings: I find the
9 Defendant is clearly and mentally competent and capable of
10:44:02 10 entering an informed plea. I find the plea is supported by
11 independent facts establishing all of the elements of the
12 offense and that the Defendant intended to do the acts he
13 committed.

14 I find the Defendant's plea of guilty is
10:44:13 15 voluntarily, freely, and knowingly made and that the Defendant
16 understands the nature of these proceedings and the consequences
17 of his plea of guilty and that this is an informed plea.

18 Therefore, sir, I accept your plea of guilty; and
19 I find you guilty as charged in Counts 1, 2, and 3 of the
10:44:29 20 information.

21 As I explained before, a presentence
22 investigation will now be conducted and a report will be
23 prepared to assist me in sentencing.

24 The sentencing hearing in this case is set for
10:44:42 25 the 30th of September at 10:00 a.m.; and Rhonda has a copy of

1 the order for presentence investigation with disclosure and
2 sentencing dates for both counsel.

3 Is there anything else from the Government,
4 Mr. Johnson?

10:44:53 5 MR. JOHNSON: No, your Honor.

6 THE COURT: All right.

7 Mr. Louis, anything else from the Defendant?

8 MR. LOUIS: No, your Honor.

9 THE COURT: All right.

10:45:11 10 That being the case, we're adjourned. Thank you.
11 (Excerpt of proceedings concluded at 10:44 a.m.)

12

13

14

15

16 C E R T I F I C A T E

17

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter, to
20 the best of my ability.

21

22 By: /s/Gayle L Dye 09-18-2018

23 Gayle L. Dye, CSR, RDR, CRR Date

24

25